

Memo

TO: FILE/SEH
FROM: HGN
DATE: 10/12/2015
CASE: *Chapman v. Lincoln*
RE: **ADA Grievance Procedure and Complaint Form**

This memorandum regards Defendant's ADA Grievance Procedure and "Complaint Form."

ADA Grievance Procedure

I made some red-line edits to the "ADA Grievance procedure." Please find it attached to the e-mail.

- 1) I would revise the sentence "The City of Lincoln's Disability Discrimination Policy governs employment-related complaints of disability discrimination." The sentence makes it seem like the grievance procedure is applicable to only employment-related issues. That is not the case.
- 2) Same with the second to last paragraph. It reads "appeal the decision *with* 15 calendar days after receipt." It should read "*with[in]* 15 calendar days."
- 3) The last paragraph should read "ADA *Coordinator[s]* finding."
- 4) Please note that the City Manager is designated as the reviewer of appeals. This would link him to ADA complaints, discrimination, and resolution. We would recommend having the City Manager designate an individual for such tasks, that way the **City Manager** distances himself from direct involvement and need for his deposition.

ADA Complaint Form

The ADA Complaint Form looks good.

- a. The City should consider, however, adding the ADA Coordinator's contact information on the bottom of this form.

"Complaint Form"

Public entities are required to establish a complaint/grievance procedure to respond to complaints of noncompliance from the public. (See 28 CFR 35.106; 28 CFR 35.107) Although the code says nothing about having a "complaint form," it does suggest they must have a process in place for "prompt and equitable resolution of complaints." (28 CFR 35.107.) Arguably, having a "complaint form" would fulfill this requirement. The Department of Justice provides a model for such procedures. Their model suggests a complaint form is not required and that the public entity has the option of requiring written complaints.

Here's the checklist for what public entities should provide in their formal grievance/complaint procedure:

1. a description of how and where a complaint under Title II may be filed with the government entity

2. *IF a written complaint is required*, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative;
3. a description of the time frames and processes to be followed by the complainant and the government entity;
4. information on how to appeal an adverse decision; and
5. a statement of how long complaint files will be retained.

Positives and Negatives to “Complaint Form”

Positives:

Providing a complaint form will likely benefit the city.

- The “complaint form” creates a formal process for all ADA issues. If we take Chapman, for example, his “complaints” were made in person, orally, to City Council members, over e-mail, etc.
 - Tracking these complaints and determining whether they were made was a headache.
 - A formal complaint will help reduce the needs for much discovery.
 - By having an official complaint form, there will be a formal process for addressing ADA issues.
- The City will have records of ADA complaints.
- It will provide complainants with a process to resolve ADA issues with the City before bringing a claim in court.
- By having such an official Complaint Form, the City implicitly creates an additional step the complainants must go through before filing a Tort Claim.
 - After all, if a complaint is genuine in resolving the issue, should they not attempt to resolve the matter informally before seeking legal remedies?
 - How they can legitimately argue they were attempting to resolve the issue, if they did not even fill out a City of Lincoln ADA Complaint Form?
- It provides the City with an additional opportunity to resolve or assess the issue before legal action is sought.
 - The City will therefore have more time to consider the claim, determine its merits, and address the problem.
 - It also demonstrates to Courts that Lincoln is active and serious with their ADA improvements.

Negatives:

There are negatives, too, however.

- It creates more administrative duties for the City.
- The City will be on direct notice of all ADA complaints.
- If enough complaints are raised about a specific “barrier” or “ADA issue” it strengthen the Plaintiff’s argument that the City should have prioritized resolving that issue.

Conclusion:

Considering the positives and negatives, I believe it would benefit the City to have an official “complaint form.”

Notice Requirement:

Attached is a template for providing notice regarding the ADA grievance/complaint policy.



NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT

In accordance with the requirements of title II of the Americans with Disabilities Act of 1990 ("ADA"), the **[name of public entity]** will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Employment: **[name of public entity]** does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under title I of the ADA.

Effective Communication: **[Name of public entity]** will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in **[name of public entity's]** programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Modifications to Policies and Procedures: **[Name of public entity]** will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in **[name of public entity]** offices, even where pets are generally prohibited.

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of **[name of public entity]**, should contact the office of ***[name and contact information for ADA Coordinator]*** as soon as possible but no later than 48 hours before the scheduled event.

The ADA does not require the **[name of public entity]** to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

Complaints that a program, service, or activity of **[name of public entity]** is not accessible to persons with disabilities should be directed to ***[name and contact information for ADA Coordinator]***.

[Name of public entity] will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

-END
HGN/kt